

Federal Railroad Administration, DOT

§ 227.103

(b) Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

[71 FR 63123, Oct. 27, 2006, as amended at 73 FR 79702, Dec. 30, 2008]

§ 227.11 Responsibility for compliance.

Although the duties imposed by this part are generally stated in terms of the duty of a railroad, any person, including a contractor for a railroad, who performs any function covered by this part must perform that function in accordance with this part.

§ 227.13 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

§ 227.15 Information collection.

(a) The information collection requirements of this part were reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and are assigned OMB control number 2130-NEW.

(b) The information collection requirements are found in the following sections: §§ 227.13, 227.103, 227.107, 227.109, 227.111, 227.117, 227.119, and 227.121.

Subpart B—Occupational Noise Exposure for Railroad Operating Employees.

§ 227.101 Scope and applicability.

(a) This subpart shall apply to the noise-related working conditions of—

(1) Any person who regularly performs service subject to the provisions of the hours of service laws governing “train employees” (see 49 U.S.C. 21101(5) and 21103), but, subject to a railroad's election in paragraph (a)(3) of this section, does not apply to:

(i) Employees who move locomotives only within the confines of locomotive repair or servicing areas, as provided in §§ 218.5 and 218.29(a) of this chapter, or

(ii) Employees who move a locomotive or group of locomotives for distances of less than 100 feet and this incidental movement of a locomotive or locomotives is for inspection or maintenance purposes, or

(iii) Contractors who operate historic equipment in occasional service, provided that the contractors have been provided with hearing protectors and, where necessary, are required to use the hearing protectors while operating the historic equipment;

(2) Any direct supervisor of the persons described in paragraph (a)(1) of this section whose duties require frequent work in the locomotive cab; and

(3) At the election of the railroad, any other person (including a person excluded by paragraph (a)(1) of this section) whose duties require frequent work in the locomotive cab and whose primary noise exposure is reasonably expected to be experienced in the cab, if the position occupied by such person is designated in writing by the railroad, as required by § 227.121(d).

(b) Occupational noise exposure and hearing conservation for employees not covered by this subpart is governed by the appropriate occupational noise exposure regulation of the U.S. Department of Labor, Occupational Safety and Health Administration located at 29 CFR 1910.95.

§ 227.103 Noise monitoring program.

(a) *Schedule.* A railroad shall develop and implement a noise monitoring program to determine whether any employee covered by the scope of this subpart may be exposed to noise that may equal or exceed an 8-hour TWA of 85 dB(A), in accordance with the following schedule:

(1) Class 1, passenger, and commuter railroads no later than February 26, 2008.

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(2) Railroads with 400,000 or more annual employee hours that are not Class 1, passenger, or commuter railroads no later than August 26, 2008.

(3) Railroads with fewer than 400,000 annual employee hours no later than August 26, 2009.

(b) *Sampling strategy.* (1) In its monitoring program, the railroad shall use a sampling strategy that is designed to identify employees for inclusion in the hearing conservation program and to enable the proper selection of hearing protection.

(2) Where circumstances such as high worker mobility, significant variations in sound level, or a significant component of impulse noise make area monitoring generally inappropriate, the railroad shall use representative personal sampling to comply with the monitoring requirements of this section, unless the railroad can show that area sampling produces equivalent results.

(c) *Noise measurements.* (1) All continuous, intermittent, and impulse sound levels from 80 decibels to 140 decibels shall be integrated into the noise measurements.

(2) Noise measurements shall be made under typical operating conditions using:

(i) A sound level meter conforming, at a minimum, to the requirements of ANSI S1.4–1983 (Reaffirmed 2001) (incorporated by reference, see § 227.103(h)), Type 2, and set to an A-weighted SLOW response;

(ii) An integrated sound level meter conforming, at a minimum, to the requirements of ANSI S1.43–1997 (Reaffirmed 2002) (incorporated by reference, see § 227.103(h)), Type 2, and set to an A-weighted slow response ; or

(iii) A noise dosimeter conforming, at a minimum, to the requirements of ANSI S1.25–1991 (Reaffirmed 2002) (incorporated by reference, see § 227.103(h)) and set to an A-weighted SLOW response.

(3) All instruments used to measure employee noise exposure shall be calibrated to ensure accurate measurements.

(d) The railroad shall repeat noise monitoring, consistent with the requirements of this section, whenever a change in operations, process, equip-

ment, or controls increases noise exposures to the extent that:

(1) Additional employees may be exposed at or above the action level; or

(2) The attenuation provided by hearing protectors being used by employees may be inadequate to meet the requirements of § 227.103.

(e) In administering the monitoring program, the railroad shall take into consideration the identification of work environments where the use of hearing protectors may be omitted.

(f) *Observation of monitoring.* The railroad shall provide affected employees or their representatives with an opportunity to observe any noise dose measurements conducted pursuant to this section.

(g) *Reporting of monitoring results.* (1) The railroad shall notify each monitored employee of the results of the monitoring.

(2) The railroad shall post the monitoring results at the appropriate crew origination point for a minimum of 30 days. The posting should include sufficient information to permit other crews to understand the meaning of the results in the context of the operations monitored.

(h) *Incorporation by reference.* The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated materials from the American National Standards Institute at 1819 L Street, NW., Washington, DC 20036 or <http://www.ansi.org>. You may inspect a copy of the incorporated standards at the Federal Railroad Administration, Docket Room, 1200 New Jersey Avenue, SE., Washington, DC 20590, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(1) ANSI S1.4–1983 (Reaffirmed 2001), Specification for Sound Level Meters, incorporation by reference (IBR) approved for § 227.103(c)(2)(i).

(2) ANSI S1.43-1997 (Reaffirmed 2002), Specifications for Integrating-Averaging Sound Level Meters, IBR approved for § 227.103(c)(2)(ii).

(3) ANSI S1.25-1991 (Reaffirmed 2002), Specification for Personal Noise Dosimeters, IBR approved for § 227.103(c)(2)(iii).

[71 FR 63123, Oct. 27, 2006, as amended at 74 FR 25173, May 27, 2009]

§ 227.105 Protection of employees.

(a) A railroad shall provide appropriate protection for its employees who are exposed to noise, as measured according to § 227.103, that exceeds the limits specified in appendix A of this part.

(b) In assessing whether exposures exceed 115 dB(A), as set forth in paragraph (a) of this section and appendix A to this part, the apparent source of the noise exposures shall be observed and documented and measurement artifacts may be removed.

(c) Except as set forth in paragraph (d) of this section, exposure to continuous noise shall not exceed 115dB(A).

(d) Exposures to continuous noise greater than 115 dB(A) and equal to or less than 120 dB(A) are permissible, provided that the total daily duration does not exceed 5 seconds.

§ 227.107 Hearing conservation program.

(a) Consistent with the requirements of the noise monitoring program required by § 227.103, the railroad shall administer a continuing, effective hearing conservation program, as set forth in §§ 227.109 through 227.121, for all employees exposed to noise at or above the action level.

(b) For purposes of the hearing conservation program, employee noise exposure shall be computed in accordance with the tables in appendix A of this part, and without regard to any attenuation provided by the use of hearing protectors.

§ 227.109 Audiometric testing program.

(a) Each railroad shall establish and maintain an audiometric testing program as set forth in this section and include employees who are required to be included in a hearing conservation program pursuant to § 227.107.

(b) *Cost.* The audiometric tests shall be provided at no cost to employees.

(c) *Tests.* Audiometric tests shall be performed by:

(1) An audiologist, otolaryngologist, or other physician who has experience and expertise in hearing and hearing loss; or

(2) A qualified technician.

(d) [Reserved]

(e) *Baseline audiogram.* This paragraph (e) applies to employees who are required by § 227.107 to be included in a hearing conservation program.

(1) *New employees.* (i) Except as provided in paragraph (e)(1)(ii), for employees hired after February 26, 2007, the railroad shall establish a valid baseline audiogram within 6 months of the new employee's first tour of duty.

(ii) Where mobile test vans are used to meet the requirement in paragraph (e)(1)(i), the railroad shall establish a valid baseline audiogram within one year of the new employee's first tour of duty.

(2) *Existing employees.* (i) For all employees without a baseline audiogram as of February 26, 2007, Class 1, passenger, and commuter railroads, and railroads with 400,000 or more annual employee hours shall establish a valid baseline audiogram by February 26, 2009; and railroads with less than 400,000 annual employee hours shall establish a valid baseline audiogram by February 26, 2010.

(ii) If an employee has had a baseline audiogram as of February 26, 2007, and it was obtained under conditions that satisfy the requirements found in 29 CFR 1910.95(h), the railroad must use that baseline audiogram.

(iii) If the employee has had a baseline audiogram as of February 26, 2007, and it was obtained under conditions that satisfy the requirements in 29 CFR 1910.95(h)(1), but not the requirements found in 29 CFR 1910.95(h)(2) through (5), the railroad may elect to use that baseline audiogram provided that the Professional Supervisor of the Audiometric Monitoring Program makes a reasonable determination that the baseline audiogram is valid and is clinically consistent with other materials in the employee's medical file.

(3) Testing to establish a baseline audiogram shall be preceded by at least